detention of the waters of a stream by an upper riparian proprietor to a reasonable use, and the introduction into the stream of foreign substances, rendering its waters unfit for use by lower riparian proprietors; and *held,* that what is a reasonable use is a question of fact. *Munice Pulp Co.* v. *Koontz,* 33 Ind. App. 532, 70 N. E. 999; *Ulbricht* v. *Eufaula Co.,* 86 Ala. 587, 6 South. 78, 4 L. R. A. 572, 11 Am. State Rep. 72; *Hoxie* v. *Hoxie,* 38 Mich. 77. The court also criticized the rule announced in *City of Richmond* v. *Test,* 18 Ind. App. 482, 48 N. E. 610, and followed in *City of Valparaiso* v. *Hagan,* 153 Ind. 337, 54 N. E. 1062, 48 L. R. A. 707, 74 Am. State Rep. 305, which takes the view that there is an exception in favor of cities to use streams for sewage without liability. In *Barnard* v. *Sherley,* 135 Ind. 547, 34 N. E. 600, 24 L. R. A. 568, 41 Am. State Rep. 454, it was held that an upper riparian proprietor may turn water into a stream which has been taken from an artesian well, and used in bathing persons suffering from the most infectious diseases. This case followed *Pennsylvania Coal Co.* v. *Sanderson,* 113 Pa. St. 126, 6 Atl. 453, 57 Am. Rep. 445, which held that the drainage of a coal mine, necessary for its operation, could be drained into a stream to the injury of a lower riparian proprietor. In *City of Richmond* v. *Test, supra,* and *City of Valparaiso* v. *Hagan, supra,* the Pennsylvania rule was also applied. By the decision then in the principal case the Indiana cases upholding the Pennsylvania rule are overruled, and the Pennsylvania rule disapproved. The Pennsylvania court in *Pennsylvania Coal Co.* v. *Sanderson, supra,* distinguished the decisions following the general rule, upon the question of casting material into the water which polluted it, on the ground that the water coming from the mine in the case before the court, was in its natural state, and the stream was used merely for natural drainage purposes. In discussing the Pennsylvania rule, FARNHAM, WATER AND WATER COURSES, Vol. II, p. 1700, says, "No comment on that decision was necessary; the very course which the court took is sufficient to overthrow it." It was held in *Ohio Oil Co.* v. *Westfall,* 43 Ind. App. 661, 88 N. E. 354, that the pollution of a stream with salt water and oil escaping from an oil well, is justifiable, where it is necessary to the enjoyment of defendant's property. The doctrine of the principal case, that necessity is no defence to unreasonable pollution of a watercourse, is supported by *Straight* v. *Hover,* 79 Ohio St. 263, 87 N. E. 174, 22 L. R. A. (N. S.) 276; *Hunter* v. *Taylor Coal Co.,* 16 Ky. L. Rep. 190; *Beach* v. *Sterling Iron and Zinc Co.,* 54 N. J. Eq. 65, 33 Atl. 286; *H. B. Bowling Coal Co.* v *Ruffner,* 117 Tenn. 180, 9 L. R. A. (N. S.) 923, 100 S. W. 116, 10 Am. & Eng. Cases 581; *Day* v. *Louisville Coal and Coke Co.,* 60 W. Va. 27, 10 L. R. A. (N. S.) 167, 53 S. E. 776.

WEIGHTS AND MEASURES—SALES OF LESS THAN QUANTITY REPRESENTED—MALA PROHIBITA.—In accordance with a trade custom the defendant sold to retailers meat wrapped in oiled paper and marked on the boxes containing it a net weight that included the paper. It was convicted under a statute (Laws of 1911, c. 136) making it a misdemeanor to "sell less than the quantity represented." *Held,* that intent or knowledge of the seller is immaterial.

(Reversed on other grounds) *State* v. *Armour & Co.*, (Minn. 1912) 136 N. W. 565.

A like conclusion was reached in *City of New York* v. *Biffle*, 91 N. Y. Supp. 737, holding that an ordinance penalizing "the use of incorrect scales" made the dealer liable even if an innocent mistake were shown to have occurred. But somewhat limiting this doctrine, see See *City of Newark* v. *East Side Coal Co.*, 77 N. J. Law. 732. There the offence was a "delivery of less than a ton for a ton of coal," and the dealer was held excused by showing that the coal was intended for a customer who had ordered less than a ton and was by mistake delivered to the complainant who had ordered a ton.

WILLS—GIFT OVER TO SURVIVORS—CONSTRUCTION.—Testator devised and bequeathed his estate equally amongst his children from and after the decease of his widow, to whom he had given a life interest, and then added a clause after the testatum and just before the execution that, "in case of the death of one or more of my children" the share or shares of the children so dying should be divided between the survivors. *Held*, that this clause referred to death only in the testator's lifetime, and all the children surviving the testator took vested interests which were not to be diverted by death during the life estate of the widow. *In re Poultney. Poultney* v. *Poultney*, L. R. [1912] 1 Ch. D. 245.

A device to "survivors" implies a contingency—that only a part of the beneficiaries may survive. In the event that the testator does not specify the contingency or condition which shall determine who are survivors, the question arises to what period or event did he refer, because death is not in itself a contingency but a certainty. *Edwards* v. *Edwards*, 15 Beav. 357, 362. If the words of survivorship are unexplained and have no apparent reference to the time of enjoyment or distribution, they are held to refer to the time of the testator's decease. This prevents a lapse of the bequest. *Stringer* v. *Phillips*, 25 Eng. Rul. Cas. 726. But these same words in a gift after a life estate are to be referred to the "period of division and enjoyment, unless there be a special intent to the contrary." *Cripps* v. *Wolcott*, 4 Madd. 11, 25 Eng. Rul. Cas. 727. And the American courts have generally held "that if there are intervening estates only those living when they terminate are survivors." ROOD, WILLS, § 660, cases n. 58. This rule would have governed the principal case, including as survivors only those living at the death of the life tenant, except that the court considered the unusual position of the clause of survivorship, as removing the case from the general rule. It was inserted just before the execution and was, to use the words of the court, "altogether detached from the clause which speaks of the decease of the widow, almost as much as if it were in a separate instrument." This was deemed sufficient to remove the presumption that the "period of division and enjoyment" should govern and upon considering that the remainders were vested at the decease of the testator (PAGE, WILLS § 659) and that vested interests are not to be diverted or cut down by doubtful expressions, but only upon clear evidence of testator's intent (1 JARMAN, WILLS (Ed. 6) 433, *Burnham* v. *Burnham*, 79 Wis. 557), the court construed "survivors" to refer to the death